Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL

Introduction

This hearing dealt with the landlords' application, filed on April 10, 2022, pursuant to the *Residential Tenancy Act* ("*Act"*) for:

- a monetary order for unpaid rent and for compensation under the *Act, Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38.

The two landlords, landlord LRL ("landlord") and "landlord NSL," and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 67 minutes.

The hearing began at 1:30 p.m. and ended at 2:37 p.m. I allowed the tenant to remain on the hearing line but step away to make another call for 5 minutes to her lawyer from 1:55 to 2:00 p.m., to decide whether she wanted to settle this application or if she wanted me to make a decision.

The tenant left the hearing from 1:55 to 2:03 p.m., put the hearing on hold which caused a disruptive, continuous beeping sound, and did not answer when I called her name repeatedly from 2:00 to 2:03 p.m. I informed the landlords that I was muting the tenant's telephone line from 2:03 to 2:06 p.m., due to the disruptive beeping sound, in order to hear the landlords' testimony and continue the hearing.

The tenant responded when I unmuted her telephone line at 2:06 p.m. The tenant claimed that she was trying to call her lawyer, so she put the hearing on hold, but she was put on hold by her lawyer's office. I informed the tenant about the evidence that was discussed with the landlords in her absence and re-reviewed this information with

the tenant to obtain her testimony. The tenant disconnected from the hearing without warning at 2:33 p.m. and did not return.

The tenant stated that she wanted to call her aunt as a witness, but she was not available during this hearing. She said that if her aunt was finished early and could attend this hearing, she would appear at the tenant's location. The tenant agreed to inform me if her aunt joined her during this hearing and wanted to testify. The tenant did not inform me that her aunt joined her or wanted to testify during this hearing, so I did not hear from the tenant's aunt as a witness.

The landlords intended to call a witness at this hearing. Later during the hearing, the landlord stated the landlords did not want to call their witness at this hearing. The landlord confirmed that the witness's testimony was not relevant to this application, since it was only regarding service of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") and an order of possession to the tenant.

All hearing participants confirmed their names and spelling. The landlord and the tenant provided their email addresses for me to send copies of my decision to both parties after the hearing.

The landlord stated that both landlords co-own the rental unit, and he provided the rental unit address. The landlord identified himself as the primary speaker for the landlords at this hearing and landlord NSL agreed to same.

Rule 6.11 of the Residential Tenancy Branch *Rules of Procedure* ("*Rules*") does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, all hearing participants separately affirmed, under oath, that they would not record this hearing.

At the outset of this hearing, I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. I informed both parties that I could not provide legal advice to them or act as their agent or advocate. Neither party made any accommodation requests.

Both parties were given multiple opportunities to settle this application and declined to do so. Both parties confirmed that they were prepared to proceed with this hearing, they wanted me to make a decision regarding this application, and they did not want to settle this application.

The landlords affirmed that they were prepared to accept the consequences of my decision if they were unsuccessful in this application, received $0, and were required to return up to double the value of the tenant's security deposit to the tenant. The tenant affirmed that she was prepared to accept the consequences of my decision if she was unsuccessful in this application, she had to pay the landlords up to $13,075.94 for their application, and she did not receive her security deposit back from the landlords.

The tenant confirmed receipt of the landlords' application for dispute resolution hearing package. The landlord confirmed receipt of the tenant's evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with the landlords' application, and both landlords were duly served with the tenant's evidence.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlords' application to increase their monetary claim by $5,146.05, to include eviction and bailiff enforcement fees. The landlord filed this amendment on December 8, 2022, and the tenant confirmed receipt on December 21, 2022. The landlords' amendment was filed and received by the tenant more than 14 days prior to this hearing, in accordance with Rules 3.14 and 4.6 of the RTB *Rules*. The tenant confirmed that she had an opportunity to respond and submitted evidence after receiving the amendment from the landlords. For the above reasons, I informed both parties that I would consider the landlords' amendment at the hearing and in this decision.

Preliminary Issue – Tenant's Adjournment Request

The tenant asked if this hearing could be adjourned, so she could have more time to submit more evidence. She said that the landlord served an amendment and evidence right before Christmas and because she is a Christian, she had to wait until after Christmas to respond. She stated that she was "blindsided" by the landlords' amendment. She explained that the Courts were closed during Christmas. She claimed that her lawyer was preparing a counterclaim against the landlords.

The landlords opposed the tenant's adjournment request. The landlord claimed that the landlords waited 7 months for this hearing, and they did not want this hearing to be delayed any further. He said that the landlords followed the law and submitted their adjournment at least 14 days prior to this hearing.

I informed both parties that I would not grant an adjournment of the landlords' application. I made this decision after taking into consideration the criteria established in Rule 7.9 of the RTB *Rules*, which includes the following provisions:

> *Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:*
>
> - *the oral or written submissions of the parties;*
> - *the likelihood of the adjournment resulting in a resolution;*
> - *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment: and*
> - *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
> - *the possible prejudice to each party.*

I find that an adjournment would not likely result in an efficient or expeditious resolution of the landlords' application. Both parties were offered multiple opportunities during this hearing to settle and declined to do so.

I find that the need for an adjournment arises out of the intentional actions or neglect of the tenant. In her written adjournment request and oral submissions, the tenant claimed that she wanted her lawyer to prepare her own counterclaim to the landlords' application. This is not a reason to adjourn the landlords' application, as the tenant has had ample notice and time to file a cross-application, since the landlords' application was filed on April 10, 2022, almost 9 months prior to this hearing on January 9, 2023. The tenant is still at liberty to file her own application, pursuant to the statutory limitation date, which is not required to be heard together with the landlords' application at the same hearing. I find that an adjournment of the landlords' application would prejudice the landlords, who have been waiting almost 9 months for this hearing date.

I informed both parties that while the RTB is closed for statutory holidays, including Christmas, the tenant had the ability to submit evidence to the online RTB dispute access site 24 hours per day 7 days per week, regardless of statutory holidays. I informed them that the RTB is not a Court and does not adhere to strict evidence rules as per the Courts.

I notified both parties that the tenant received the landlord's amendment and response on December 21, 2022, prior to this hearing on January 9, 2023, and she had ample time to review and respond to it, both before and after Christmas, and submit her own

evidence, which she did. I informed them that the tenant had 7 days prior to this hearing to submit evidence, as per Rule 3.15 of the *Rules*. I informed both parties that the landlord abided by the 14-day timeline in the *Rules*.

This hearing lasted 67 minutes of the 60-minute maximum hearing time, so the tenant had a fair and full opportunity to be heard, and ample and additional time to present her submissions, evidence, and responses to the landlords' application and amendment.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for compensation under the *Act, Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's security deposit?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on November 1, 2021. Monthly rent in the amount of $2,750.00 was payable on the first day of each month. A security deposit of $1,375.00 was paid by the tenant and the landlords continue to retain this deposit in full. A written tenancy agreement was signed by both parties. The tenant did not provide a written forwarding address to the landlords. Move-in and move-out condition inspection reports were not completed for this tenancy. The landlords did not have written permission to keep any amount from the tenant's security deposit.

The landlord stated that this tenancy ended on April 14, 2022, while the tenant claimed that it ended on April 7, 2022. Both parties agreed that this tenancy ended when the tenant was evicted from the rental unit by a company hired by the landlords, pursuant to an RTB order of possession.

The tenant stated that she did not provide a written forwarding address to the landlords because she did not have a physical address to give them until six months ago. She claimed that she could have given her lawyer's address, but she did not do so. She

said that she did not want to be “harassed” by the landlords, so she did not want to give a written forwarding address.

The landlord testified regarding the following facts. The landlords’ application covers rent and utilities until the tenant moved out. The landlords seek costs for the eviction of the tenant. The landlords provided bank statements and excel spreadsheets as proof. The tenant paid $1,300.00 in February, not $2,750.00 for rent. Nothing was paid for rent by the tenant in March or April. The tenant did not pay any utilities from January until the eviction date, to the landlords. The tenant owed 50% of hydro and gas cost to the landlord.

The tenant testified regarding the following facts. She disputes the landlords’ entire application. She does not agree to pay for the civil enforcement costs of $5,000.00 to the landlords. The tenant has proof that she paid utilities each month to the landlords. The tenant has bank statements to prove that she paid rent to the landlords each month. The utilities at the rental unit were not in working order, as the tenant did not have any heat for over 1.5 weeks. The rental unit was freezing, and the landlords had to change the faulty thermostat. There was no hot water at the rental unit. The tenant was “severely pushed” out of the rental unit with no notice. The tenant paid the full rent for February and March to the landlords. In April, the tenant provided an e-transfer to the landlord, but he did not accept it. The tenant paid for partial utilities from January to April, to the landlords, due to electricity, water issues, and faulty wiring. The tenant kept the rental unit in reasonable, clean condition. No proper inspection was done by the landlords. If the tenant knew that the landlord would hire a company to “brutally evict” her without notice, she would have left in an orderly, careful fashion. She would have prepared her elderly aunt. The tenant was “blindsided.” The tenant provided medical notes to confirm her back injury.

The landlord stated the following facts in response. The landlord did not receive any proof of bank statements from the tenant for the rent paid. The tenant paid $1,300 on February 7. The tenant offered $400.00 on March 1 and March 22. The tenant told the landlord that her lawyer said that she should pay that much money. The landlord refused the rent, which was offered by the tenant on March 29 of $760.00. The tenant offered $1,000.00 on March 30, $600.00 on April 1, and $1,000 on April 5 and April 7, but she cancelled all of these e-transfers shortly after. The landlord refused the tenant’s April rent because he did not want to stop the legal process of eviction against the tenant. The landlord gave the tenant a 10 Day notice on March 2, and the tenant did not respond, so the landlord followed all the rules to complete a direct access by registered mail and obtained an order of possession against the tenant.

Analysis

Burden of Proof

During this hearing, I repeatedly informed the landlords about the following information. The landlords, as the applicants, have the burden of proof, on a balance of probabilities, to prove their application and monetary claims. The *Act, Regulation*, RTB *Rules*, and Residential Tenancy Policy Guidelines require the landlords to provide evidence of their claims, in order toa obtain a monetary order. The landlords repeatedly affirmed their understanding of same.

During this hearing, I informed the landlords about the following information. The landlords received an application package from the RTB, including instructions regarding the hearing process. The landlords served their application to the tenant, as required. The landlords received a document entitled "Notice of Dispute Resolution Proceeding" ("NODRP") from the RTB, after filing their application. This document contains the phone number and access code to call into this hearing. The landlords affirmed their understanding of same.

The NODRP states the following at the top of page 2, in part (emphasis in original):

> *The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.*
>
> - *It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at www.gov.bc.ca/landlordtenant/submit.*
> - *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at www.gov.bc.ca/landlordtenant/rules.*
> - *Parties (or agents) must participate in the hearing at the date and time assigned.*
> - *The hearing will continue even if one participant or a representative does not attend.*
> - *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

The NODRP states that a legal, binding decision will be made in 30 days and links to the RTB website and the *Rules* are provided in the same document. I informed both parties about same during this hearing.

The landlords received a detailed application package from the RTB, including the NODRP documents, with information about the hearing process, notice to provide evidence to support their application, and links to the RTB website. It is up to the landlords to be aware of the *Act, Regulation*, RTB *Rules*, and Residential Tenancy Policy Guidelines. It is up to the landlords to provide sufficient evidence of their claims, since they chose to file this application on their own accord.

Legislation, Policy Guidelines, and Rules

The following RTB *Rules* are applicable and state the following, in part:

> *7.4 Evidence must be presented*
> *Evidence must be presented by the party who submitted it, or by the party's agent…*
> …
> *7.17 Presentation of evidence*
> *Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence…*
>
> *7.18 Order of presentation*
> *The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof…*

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claims. To prove a loss, the landlords must satisfy the following four elements on a balance of probabilities:

1) Proof that the damage or loss exists;
2) Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4) Proof that the landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Policy Guideline 16 states the following, in part (my emphasis added):

> *C. COMPENSATION*
> *The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred.* ***It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.*** *In order to determine whether compensation is due, the arbitrator may determine whether:*
> - *a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;*
> - *loss or damage has resulted from this non-compliance;*
> - ***the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and***
> - *the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.*
>
> …
> *D. AMOUNT OF COMPENSATION*
> *In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only, and must not include any punitive element.* ***A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.***

I find that the landlords did not properly present their application, claims, and evidence, as required by Rule 7.4 of the RTB *Rules*, despite having multiple opportunities to do so during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules.*

During this hearing, the landlords failed to properly go through their claims and the documents submitted as evidence. The landlords referenced providing documents but did not review them in sufficient detail, by pointing me to specific page numbers, provisions, or other detailed information. The landlords did not review their monetary order worksheet at all during this hearing, did not reference providing one, did not

review each item or the amount for same, and did not review the evidence in support of each item.

This hearing lasted 67 minutes, so the landlords had ample opportunity to present their application and evidence and respond to the tenant's evidence. I repeatedly asked the landlords if they had any other information to add and if they wanted to respond to the tenant's evidence.

I informed both parties that if the hearing did not finish within the 60-minute hearing time, it could be adjourned to a later date to finish submissions and evidence. I notified them that neither party was required to rush through their submissions or evidence. Both parties affirmed their understanding of same during this hearing.

On a balance of probabilities, I dismiss the landlords' entire application of $13,075.94, without leave to reapply. I find that the landlords failed the above four-part test, as per section 67 of the *Act* and Residential Tenancy Policy Guideline 16.

According to the online RTB dispute access site details, the landlords filed this application for a monetary order of $13,075.94 against the tenant, which includes $5,146.05 for "eviction" costs and $7,929.85 for unpaid rent and utilities. The landlords did not confirm the above amounts, during this hearing. The landlords did not provide a monetary breakdown for any of their claims, during this hearing.

During this hearing, the landlords failed to reference or explain any invoices, receipts, or quotes, to show if, when, and how they paid for any costs claimed in their application. The landlords referenced eviction costs but did not review sufficient details or evidence regarding same.

The landlords referred to unpaid utilities from the tenant, but they did not provide any amounts or breakdowns of same, nor did they review sufficient details or evidence of same, during this hearing.

The landlords referred to unpaid rent from the tenant, but they did not provide sufficient amounts, breakdowns, details or evidence of same during this hearing.

I find that the landlord provided confusing testimony regarding the rent that was and was not paid by the tenant, for February, March and April 2022. The landlords did not reference any rent due from November 2021, even though they have included an amount for it in their monetary order worksheet.

The tenant testified that she paid full rent to the landlords for February and March 2022, but the landlords refused her rent for April 2022. The landlord stated that he refused rent from the tenant from March to April 2022 because the tenant did not pay the full amounts and he did not want his 10 Day Notice and eviction to be stopped at the RTB.

I find that the landlords cannot refuse rent from the tenant, even if they are pursuing an eviction. The landlord testified that he was told by the RTB that he could issue "use and occupancy only" receipts to the tenant. However, the landlords did not do this or review proof of same.

Therefore, I find that the landlords have not provide sufficient evidence, on a balance of probabilities, that the tenant failed to pay full rent to the landlords for this tenancy.

The landlords continue to retain the tenant's entire security deposit of $1,375.00. Although the tenant did not apply for the return of her security deposit, I am required to consider it on the landlords' application to retain it, as per Residential Tenancy Policy Guideline 17.

Although the landlords' right to claim against the deposit for damages was extinguished for failure to complete a move-in condition inspection report, as required by section 24 of the *Act*, the landlords also applied for unpaid rent, not just damages, in this application.

However, the tenant has not provided a written forwarding address to the landlords, as of the date of this hearing, stating that she did not want to do so, for fear of "harassment." In this application, the landlords listed the tenant's address as the rental unit because the tenant has not supplied any other forwarding address to the landlords.

Therefore, I cannot make a decision regarding the return of the tenant's security deposit, as the requirements of section 38 of the *Act* have not been met.

Conclusion

The landlords' entire application is dismissed without leave to reapply.

The tenant's security deposit of $1,375.00 cannot be decided in this application, as the tenant has not provided a written forwarding address to the landlords, as required by section 38 of the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 09, 2023

Residential Tenancy Branch